



## **New York City Environmental Justice Alliance**

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### **New York City Environmental Justice Alliance's (NYC-EJA) Testimony to the City Council's Sub-Committee on Zoning and Franchises on Proposed Revisions to the Waterfront Revitalization Program (WRP).**

September 30, 2013

Founded in 1991, the New York City Environmental Justice Alliance (NYC-EJA) is a non-profit citywide membership network linking grassroots organizations from low-income neighborhoods and communities of color in their struggle for environmental justice. NYC-EJA empowers its member organizations to advocate for improved environmental conditions and against inequitable environmental burdens. Through these efforts, member organizations coalesce around specific common issues that threaten the ability of low-income communities of color to thrive, and coordinate campaigns designed to affect City and State policies. The impact of climate change and mitigation measures is central to NYC-EJA's agenda.

#### **NYC-EJA's Waterfront Justice Project**

In 2010, NYC-EJA launched the Waterfront Justice Project, New York City's first citywide community resiliency campaign. When the City of New York initiated its overhaul of the Comprehensive Waterfront Plan (Vision 2020) in 2010, NYC-EJA began an advocacy campaign to convince the Bloomberg Administration to reform waterfront zones designated as the Significant Maritime and Industrial Areas (SMIAs.) These are zones created by the 2002 NYC Waterfront Revitalization Program (WRP) to encourage the protection and siting of industrial and maritime uses along the waterfront.

Development applications in SMIA's are regulated by the WRP -- the legal mechanism to determine consistency with NYC's waterfront policies and regulations. The SMIA's are treated differently by the WRP than other waterfront areas by assuming that industrial and maritime uses are consistent there, resulting in the siting and clustering of potentially noxious and polluting uses and infrastructure. There are only six SMIA's in the City -- all are located in classic "environmental justice" communities (the South Bronx, Sunset Park, Red Hook, Newtown Creek, Brooklyn Navy Yard & the North Shore of Staten Island) and predominantly low-income communities of color.

#### **Waterfront Justice: Building Resilient Communities & a Diverse Economy**

NYC-EJA discovered the six SMIA's are all in hurricane storm surge zones, and that the City of New York had not analyzed the cumulative contamination exposure risks associated with clusters of heavy industrial use in such vulnerable locations. In collaboration with Pratt Institute, NYC-EJA began a research project to assess facilities that use, transport, or store hazardous or toxic substances in order to identify community vulnerability for those working and living in and around SMIA's in the event of storm surge, flooding, high winds, and sea-level-rise.

NYC-EJA endorses a balanced approach to waterfront policy that bolsters waterfront communities by promoting economic growth while protecting the environment and advancing equity. We envision innovative waterfront industrial regulations and zoning that set the standard for environmentally conscious development while enhancing community resiliency. New York City needs a diverse economy that supports working and middle class families. Promoting and preserving industrial jobs and manufacturing zoning in the city is a key component of creating a resilient and thriving economy.

However, while NYC-EJA supports the continuation of industrial and water-dependent uses in the SMIA's, it is concerned that the city's manufacturing zones located on the waterfront are vulnerable to climate change impacts, which pose a threat on industrial facilities handling, storing and transferring hazardous materials and toxic chemicals used in industrial processes. NYC-EJA believes that New York City can and must create policies that mitigate climate change impacts, reducing the risk of hazardous exposures and minimizing the negative impacts associated with industrial uses, in order to foster a healthy economic base for all New Yorkers. This process can start by strengthening and streamlining the Waterfront Revitalization Program policies that apply in the working waterfront and manufacturing zones.

### **NYC-EJA's Waterfront Revitalization Program (WRP) Recommendations**

NYC-EJA commends the Department of City Planning (DCP) for the many positive changes in the proposed revisions to the Waterfront Revitalization Program (WRP). WRP policies are used in the consistency review process for new development proposals and have limited or no impact on existing and as-of-right uses. Even so, the WRP represents an important opportunity to support sustainable and climate resilient development on the waterfront. The Department of City Planning's proposed revisions to the WRP show the WRP's capacity to promote waterfront policies that are environmentally, socially, and fiscally responsible. We are particularly pleased that in response to NYC-EJA's concerns the proposed WRP has integrated many recommendations, which have been discussed in various forms of collaboration with DCP over the last three years<sup>1</sup>.

However, a few areas remain where the WRP updates still falls short of providing the strongest protections for residents, workers, and local businesses<sup>2</sup>. NYC-EJA urges the City Council to fully address the contamination exposure risks associated with clusters of heavy industrial uses in the Significant Maritime and Industrial Areas (SMIA's), and support the following recommendations:

#### **NYC-EJA RECOMMENDATION 1:**

#### **Require the WRP vulnerability assessment of climate change impacts to address potential exposures to hazardous substances during extreme weather events**

WRP Policy 6.2 A indicates that in the planning and design of projects, "*vulnerabilities to and impacts of sea level rise, coastal flooding, and storm surge over the lifespan of the proposed project should be assessed.*" NYC-EJA is concerned that the criteria to conduct and evaluate this assessment have not been defined adequately in the draft revisions.

New planning and design proposals in industrial waterfront neighborhoods require a comprehensive analysis of climate change impacts. The vulnerability assessment should be

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<sup>1</sup> See NYC-EJA's testimony prepared for the 2012 City Planning Commission hearing on WRP, available at: <http://bit.ly/19MnOdO>.

<sup>2</sup> See NYC-EJA's recent memo to the City Council staff for an outline of NYC-EJA's policy recommendations as they relate to: 1) language included in the draft published by DCP that was reviewed through public hearings in 2012 by Community Boards, Borough Boards and Borough Presidents, yet has been deleted in the 2013 draft; 2) new language that was introduced in 2013; and 3) other language of concern. Available at: <http://bit.ly/19NK8DD>

comprehensive and address projected climate change impacts that consistently include storm surge and high winds, not just flooding and sea level rise, and develop guidelines to assess / mitigate these risks and support industrial businesses with their implementation. As advances in climate science allow for greater precision in estimates of climate impacts in the years to come, using the “best available science-based projections,” will provide a means for applicants and reviewers to integrate climate change consciousness into “all other considerations” during the WRP consistency review process.

Notwithstanding, this assessment should include the impacts on public safety resulting from potential exposure of hazardous substances and toxic chemicals during extreme weather events -- including long-term public health impacts to protect the health and well-being of surrounding communities, businesses, local workers, and natural resources. Just as the WRP requires a level of expertise on ecological issues to review the natural resources assessment required in Policy 4.2, it is expected that DCP should be able to review potential hazardous exposures either through the vulnerability assessment prepared by the applicant’s architect or engineer, new DCP staff hired with this expertise, or by relying on other permit information provided by applicants.

**NYC-EJA's WRP Recommendations:**

- **Require the WRP vulnerability assessment of climate change impacts in the planning and design of all projects on the coastal zone to address potential exposure to chemicals / hazardous materials to humans and the environment during extreme weather events, and to the degree feasible, mitigate these impacts;**
- **Provide a clear definition of vulnerability that includes threats to public health and well-being in addition to other impacts on both residents and workers;**
- **Require the WRP vulnerability assessment of climate change impacts to be comprehensive, evaluating vulnerability to high winds, along with storm surge, flooding, and sea level rise -- using current and best available science-based projections; and**
- **Include guidance on how to evaluate impacted assets, potential hazards, and vulnerabilities.**

**NYC-EJA RECOMMENDATION 2:**

**Mandate safe & responsible use of hazardous materials and toxic chemicals**

NYC-EJA continues to advocate that language regarding hazardous materials and toxic chemicals should be consistent and clear throughout Policy 7 -- for example all policies should apply to facilities transferring and storing waste -- not just those handling it.

Although many Land Use Group 18 uses that allow the presence of hazardous substances as-of-right are also regulated by city, state and/or federal environmental regulations that cover the use of these substances, these regulations do not reference potential climate change impacts. Therefore, the WRP plays an important role in helping the applicant understand issues it needs to consider, and coordinate mitigation actions with other existing regulations.

**NYC-EJA's WRP Recommendations:**

- **Require an adequate control plan for emergency preparedness, pollution prevention, good housekeeping and control of hazardous wastes, toxic pollutants, and substances hazardous to the environment for any facility, not just *handling*, but *transferring and storing* these substances -- that considers the impacts of projected climate change listed in Recommendation 1 (above); and**

- **Unless proven infeasible, mitigation measures should include but not be limited to best management, design, and construction practices; emergency preparedness; industrial pollution prevention, and sustainable development best practices.**

**NYC-EJA RECOMMENDATION 3:  
Protect local industrial jobs and businesses**

Supporting local industrial jobs and businesses in the Significant Maritime Industrial Areas (SMIAs) should be a key priority for the WRP. NYC-EJA is gravely concerned that the new WRP is opening the door to potential re-zonings in the SMIAs. This is a significant threat to manufacturing jobs in NYC given that the majority of land zoned for heavy manufacturing (excluding Fresh Kills, NYC’s airports, and Con Ed facilities) is in the SMIAs.

Policy 1 (Residential and Commercial Redevelopment) promotes revitalization of “*underused*” industrial land through rezoning for housing and commercial development -- but the WRP does not define what constitutes “*underused*.” Guidelines that provide transparent criteria for whether land is “*underused*” will help, rather than impede, contextual analyses in the WRP consistency review. Policy 2 (Maritime and Industrial Development) uses new language suggesting that non-water dependent or non-industrial uses “*can spur investment in waterfront infrastructure*”. However, to be consistent with the WRP goal to “*promote water-dependent and industrial uses in the Significant Maritime and Industrial Areas*”, changes in land use should exclude non-water-dependent uses that are not strictly accessory.

**NYC-EJA's WRP Recommendations:**

- **Provide clear guidelines that define the criteria for “underused land” in the working waterfront; and**
- **Discourage discretionary actions in the SMIAs that reduce land zoned for manufacturing and introduce non-industrial, non-water-dependent uses that are not strictly accessory.**

**NYC-EJA RECOMMENDATION 4:  
Protect & restore wetlands in industrial waterfront neighborhoods**

The SMIAs in Brooklyn, Queens, and the Bronx may contain a smaller amount of wetlands acreage than in Staten Island -- but there is a need to provide for “sensitive industrial development” in these areas, nonetheless. Policy 2 includes provisions to “promote” ecologically sensitive industrial development in the Significant Maritime and Industrial Areas (SMIAs), but the design and implementation criteria for such sensitive development must be clarified. WRP should protect ecologically sensitive areas located inside or immediately adjacent to the South Bronx, Sunset Park and Newtown Creek SMIA’s, where Special Natural Waterfront Areas (SNWAs) or Recognized Ecological Complexes (RECs) have been identified, and prevent the loss of net tidal and freshwater wetlands in these areas.

**NYC-EJA's WRP Recommendations:**

- **WRP should protect ecologically sensitive areas located inside or immediately adjacent to the South Bronx, Sunset Park and Newtown Creek SMIA’s, where Special Natural Waterfront Areas (SNWAs) or Recognized Ecological Complexes (RECs) have been identified, and prevent the loss of net tidal and freshwater wetlands in these areas; and**

- **The inventory of Special Natural Waterfront Areas (SNWAs) or Recognized Ecological Complexes (RECs) should list ecological resources included in the New York City Wetlands Transfer Task Force.**

**NYC-EJA RECOMMENDATION 5:**

**Require waterfront public access in industrial waterfront neighborhoods**

WRP Policy 8 (Public Access) does encourage waterfront public access in industrial areas (such as the SMIAAs), but it does not require it. This represents a missed opportunity to ensure waterfront public access, physical or visual, as appropriate, in industrial waterfront communities - even though this action may require a zoning text amendment.

**NYC-EJA's WRP Recommendation:**

- **Require an appropriate form of waterfront public access, unless proven infeasible & unsafe, in the SMIAAs and ESMIAAs**

NYC-EJA commends the Sub-Committee on Zoning and Franchises for inviting public comments on the proposed amendments to the Waterfront Revitalization Program. The City Council plays a critical role in ensuring that New York City fully takes advantage of this opportunity to increase the sustainability and resiliency of its working waterfront. We feel that the proposed WRP is a significant accomplishment, while we look forward to discussing in more detail how NYC-EJA's recommendations can help strengthen this important reform.